IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

(1) Writ Petition No. 5981 of 1991
with
(2) Writ Petition No.2190 of 1994

Mohammed Haroon Abdul Jabbar Ansari ..Petitioner

vs.

1. Malegaon Municipal Council ..Respondents
andothers

Shri A.V.Bukhari i/b Shri Umesh Natar for petitioner.
Shri P.L.Naik for respondent no.1.
Shri C.R.Sonawane, A.G.P. for respondent no.2.
Shri P.N.Joshi for respondent no.5 in W.P.No.2190 of 1994

CORAM: A.P.SHAH &
DR.D.Y.CHANDRACHUD JJ.
24**th June2005**

P.C.

1. The petitioner was appointed as a Pathology Laboratory Technician in May, 1986 on daily wages. It appears that his appointment was made in leave vacancy and was continued from time to time. However, the petitioner was not paid wages though he worked from 1986. The post of Laboratory Technician being class III post, the authority to make appointment vests with the Maharashtra Rajya Regional Service Selection Board. The petitioner was asked by the Municipal Council to approach Maharashtra Rajya Regional Service Selection Board for his appointment to the said post. The petitioner preferred Writ Petition No.5981 of 1991 claiming wages and other benefits as per the pay

scale for the post of Laboratory Technician prevailing with the respondent and also sought direction against the Selection Board to appoint him on the post of Laboratory Technician without considering the age limit prescribed by the Government for the said post. This petition came to be admitted on 1st April, 1992 but no interim relief was granted. The petitioner thereafter appeared before the Selection Board. The Selection Board declined to consider the petitioner for the said post as he was clearly age barred. Consequently the petitioner's services were discontinued and candidates selected by the Selection Board i.e.respondent nos. 4 and 5 were appointed. The petitioner then preferred Writ Petition No.2190 of 1994 seeking to quash the appointment of respondent nos. 4 and 5 and directing the Municipal Council to appoint the petitioner in the post of Laboratory Technician without considering the age limit as prescribed by the Government. This petition was admitted and directed to be heard along with Writ Petition No.5981 of 1991.

2. We have heard Shri Bukhari for the petitioner and Shri Naik for respondent no.1 and the learned A.G.P. for State. It is not disputed before us that the post of the laboratory technician being class III post authority to fill up such post

vested with the Maharashtra Rajya Regional Selection Board and the Municipal Council could not have made appointment to the said post. It was beyond the competence of the Municipal Council to make the appointment for class III posts beyond the period of 6 months and it seems that the appointment of the petitioner was renewed from time to time on 6 monthly basis. The Selection Board has not considered the candidature of the petitioner as he was clearly age barred and the Board had no power to condone the age bar. Under the circumstances, it is not possible to accept the prayer of the petitioner to appoint him in the post of Laboratory Technician. However, the prayer of the petitioner for wages is liable to be granted. The petitioner has worked almost continuously from 1986 to 1991. Although he was appointed on daily wage basis his wages were not paid. We, therefore, direct the Municipal Council to calculate the wages of the petitioner and release the payment within a period of four months from today.

3. Rule is partly made absolute in terms of the above order. No order as to costs.